

Illinois Commerce Commission

Statement of Commissioner Terry S. Harvill regarding approval of the merger between SBC and Ameritech Illinois, Docket No. 98-0555

September 23, 1999

Mr. Chairman, members of the Commission, and the public:

For more than a year the Illinois Commerce Commission has managed an approval process involving literally thousands of pages of evidence and testimony and one of the largest corporate mergers in history; a merger that will shape the future of telecommunications in Illinois and across the nation. Today, we are at the end of that process. Thankfully.

The last weeks and months have been challenging, filled with much thoughtful deliberation and study. The issues involved in this case are complex and the effect of this decision will impact millions of customers. My fellow Commissioners and their assistants deserve much credit for attempting to craft conditions on this merger that will have long-term benefits for consumers and competitors. They have largely succeeded.

I have -- in the final analysis -- decided that the merger does not satisfy the spirit or the letter of Illinois law. I am joined in that conclusion by the Staff of the Commission, the Attorney General of the State of Illinois, the State's Attorney of Cook County, the Citizens Utility Board, and many other intervenors who agree that it is in the best interest of Illinois consumers and the marketplace that this union not be approved.

I believe that the weight of objective evidence in this docket clearly indicates that SBC would have entered the Illinois telecommunications market as a competitor to Ameritech rather than as a partner. I am unmoved by the comments of SBC officers to the contrary. SBC's aggressiveness as a competitor, its business strategy, and the attractiveness of Illinois markets leads inextricably to only one conclusion: It has been and continues to be SBC's intention to enter the Illinois market. I am convinced that SBC would have entered the Illinois market and that this entry would have produced robust and impactful competition far exceeding our ability to force the companies to embrace open markets. Furthermore, I am unimpressed with the subjective evidence offered by SBC and Ameritech that this merger should be approved under Illinois law and I am skeptical -- given SBC's reputation as a ruthlessly aggressive and litigious company -- that we can rely on its assurances.

I am deeply disappointed that the majority's order neglects to give serious consideration to economic conditions that exist in Illinois and fails to offer any substantive economic analysis as the basis of its conclusions. While the order states that the DOJ Merger Guidelines should be employed flexibly I have failed to find even one area in which the majority reached a decision based on the unique nature of the Illinois telecommunications market.

Despite the earnestness of my fellow Commissioners who have worked tirelessly in the last few months to develop conditions that would make this merger palatable, I do not believe -- in the final analysis -- that regulatory fiat can replace the benefits of competition that will be lost as a result of this merger. In fact, if competition had not been an issue in this case I could very well have voted with the majority.

I feel compelled to address the issue of savings, particularly the misconception (or misunderstanding) that the order fails to provide savings to customers. My view on this issue has not changed from the beginning of our consideration of this docket. The order does provide for savings to customers while preserving the incentive of companies to merge. And let me add something here parenthetically, I do not as a matter of principle oppose all mergers. The distribution of savings pursuant to this order will benefit customers and the marketplace. I would like to note that the California methodology suggested for adoption by this Commission underestimated savings in that state by 100 percent. I remained convinced that the use of actual savings, rather than estimated savings, is the fairest and most accurate method of addressing this issue. If there are savings generated by this merger they will be shared with customers in a manner that will have long-term benefits for the market and consumers. It would be irresponsible of this Commission to order SBC and Ameritech to share hundreds of millions of dollars in merger related savings that may not occur.

It is my view that the Public Utilities Act requires this Commission to assess the potential of a merger to divert Illinois from its pro-competitive path. To the extent that this merger will frustrate the evolution of the marketplace toward competition I cannot vote in its favor.

Mr. Chairman, I will be presenting my thoughts in a dissenting opinion.